

## Water Water Everywhere...But Not a Drop to Spare

Some groundbreaking things have been happening in the world of **WATER**, and it's not the recent floods.

### Maladministration in Water Allocation from 2002

Food and water security are two significant issues that have been addressed in a recent appeal where Lestar Manning instructed Phil Sheridan before the Land Court. The extraordinary decision will have broader ramifications for the process of water allocation throughout the state.

Member P A Smith's reasons for judgement said *"However, concerns that I have as a consequence of the evidence placed before me in these appeals and in particular as set out in Exhibit 43 leads me to the conclusion that it is appropriate to bring my concerns of maladministration to the attention of the Honourable the Premier and the Honourable the Minister for Natural Resources and Mines."*

The reasons for judgement handed down in Brisbane on 5 April 2012, cited as *Gallo and Williams v Chief Executive, Department of Environment and Resource Management* [2012] Q LC 0015, highlight the long-term maladministration of water allocation in Management Area B of the Atherton subartesian area.

Evidence before the court was that since the inception of the Barron Water Resource Plan in 2002 and until April 2010 no licenses had been assessed on the basis of water use efficiency. Water use efficiency is a fundamental criteria in the *Water Act* 2000 and in the Barron Water Resource Plan 2002 and Resource Operations Plan 2005.

At some point in time the Department became concerned about the volume of subartesian water being allocated and stopped processing applications that had been made, to allow it to declare a moratorium under the *Water Act* 2000. Many farmers had expended considerable sums on constructing water supply infrastructure only to have their applications inappropriately held by the Department without being processed pending the introduction of the moratorium.

The ramifications for this maladministration may not be limited to the Atherton tablelands.

The new minister, the Honourable Mr Cripps, has already referred this matter to the Crime and Misconduct Commission. We await the outcome.

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### Coal Seam Gas and Groundwater

The Environmental Impact Statement for the Surat Gas Project also deals with groundwater and has just been released.

Chapter 14 deals with groundwater and chapter 28 deals with the cumulative impacts.

At figure 14.3 in chapter 14 there is a pictorial representation of the underground stratification and groundwater systems present within the project development area. It identifies shallow groundwater system, intermediate groundwater system, coal seam gas groundwater system and deep groundwater system. Figure 14.5 shows the direction of groundwater flow for the purpose of the great artesian basin and identifies the intake (recharge) areas.

Figures 28.3 to 28.6 inclusive identify the 2039 year predicted unmitigated peak drawdown contours and the 2061 year predicted unmitigated contours 10 years after production ceases. On each of those contour maps the relevant state trigger threshold drawdown contour is identified. The drawdown contour specified by the state for the shallow groundwater system is 2 m and for each of the following 3 groundwater systems is 5 m.

The area affected goes north of Wandoan, south towards Goondiwindi, east to Toowoomba and west of Roma.

It is a huge area in which the effects of drawdown on water supply through the four identified aquifers will be significant.

Table 28.3 provides the predicted maximum of groundwater drawdown -- cumulative as being 2.5 m for the shallow groundwater system, 60 m for the intermediate groundwater system, 150 m for the coal seam groundwater system (Walloon coal measures) and 75 m for the deep groundwater system. Across each of the aquifers the estimated drawdown is 287.5 m.

The extent of the impacts identified must be considered by farming communities and their need for security for water supply and food production.

These impacts should also be considered in terms of the proposed coal seam gas conduct and compensation agreements and impacts upon bores being used for farm and domestic purposes.

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## Water Prosecutions

The Department commenced a spate of prosecutions against farmers in the Atherton Tableland for the alleged unauthorised taking of water, predominantly under section 808 (1) of the *Water Act* 2000 (the Act).

**p&e Law** represented numerous parties in relation to Complaints Made and Summons for the alleged breaches, took instructions, sought to dissuade the Department of continuing with the actions, briefed Counsel and appeared and instructed in the Magistrates Court.

The Department attempted to utilise powers under section 760 of the Act requiring production of documents and section 763 of the Act requiring production of information. We were able to challenge many of those on behalf of our clients because of defective procedural requirements. If validly issued, notices can require a spouse to provide evidence against their partner.

Whilst all of the prosecutions will not proceed, they have caused our clients many anxious moments.

A fundamental difficulty arises with the approach of the Department where the farming community needs to have time to adjust to water restrictions which impact upon their capacity to earn an income from the land. A farmer telephoned whilst quite distressed asking if he could continue to water a crop in circumstances where he would exceed his allocation. If he failed to water the crop he would lose the crop. He had been told that water trading would be instigated and had arranged for the extra water and had planted accordingly. As water trading was not instigated at that time he was left with the unpalatable choice of a potential prosecution or a potential loss of a crop.

The former Water Advisory Group had advised the previous government of the difficulties with the restricted allocations.

We commend the new Minister, who we understand will be reintroducing the Water Advisory Groups and has a good understanding of the needs of the farming community and the impacts of the former government's regime on them.

With a forecast review of the Barron Plan it is timely for the farming community to assist the new Minister in creating a plan that provides appropriate water security for farming to enable the proper utilisation of the good quality agricultural land on the Tablelands.

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We back onto the palatial surrounds of the Horton Park Golf Course.



For those of you based in the north of the State, feel free to contact our established Cairns office at 211 Draper Street.

For further details on how our specialist team of solicitors can assist you and to read about other important points of law and legislation, you can visit our new website at [www.paelaw.com](http://www.paelaw.com).

Our team consists of:

Lestar Manning - Partner  
Andrew Williams

Michael Neal - Partner  
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Matt Patterson - Partner  
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